No. 296 re.

Motion to advance

Filed Oct. 8, 1900.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States

OCTOBER TERM, 1900.

CHARLES C. McCHORD, &c., ... *Appellants,*

No. 806. *VERSUS*

LOUISVILLE & NASHVILLE RAILROAD COMPANY, *Appellee.*

And Sundry Other Cases.

MOTION TO ADVANCE.

JOHN P. MORTON & COMPANY, LOUISVILLE, KY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

CHARLES C. MCCHORD, &c., ... *Appellants,*

396 *VERSUS*

LOUISVILLE & NASHVILLE RAILROAD COMPANY, . *Appellee.*

CHARLES C. MCCHORD, &c., ... *Appellants,*

397 *VERSUS*

THE LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY, ... *Appellee.*

CHARLES C. MCCHORD, &c., ... *Appellants,*

398 *VERSUS*

THE CHESAPEAKE & OHIO RAILWAY COMPANY, . *Appellee.*

CHARLES C. MCCHORD, &c., ... *Appellants,*

399 *VERSUS*

THE SOUTHERN RAILWAY COMPANY IN KENTUCKY, . *Appellee.*

CHARLES C. MCCHORD, &c., ... *Appellants,*

400 *VERSUS*

THE CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, ... *Appellee.*

MOTION TO ADVANCE.

On behalf of the appellants to the above-entitled causes, we would respectfully move the court to advance them for hearing and assign them to be argued together upon some day which the court may fix.

On March 10, 1900, the State of Kentucky passed a law for the regulation of railroad business done within the State, and for the prevention of the exaction by railroads of extortionate freight and passenger rates, in words and figures as follows:

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

§ 1. When complaint shall be made to the railroad commission accusing any railroad company or corporation of charging, collecting, or receiving extortionate freight or passenger rates over its line or lines of railroad in this Commonwealth, or when said commission shall receive information, or have reason to believe that such rate or rates are being charged, collected, or received, it shall be the duty of said commission to hear and determine the matter as speedily as possible. They shall give the company or corporation complained of not less than ten days' notice, by letter mailed to an officer or employe of said company or corporation, stating the time and place of the hearing of same; also the nature of the complaint or matter to be investigated, and shall hear such statements, argument, or evidence offered by the parties as the commission may deem relevant, and should the commission determine that the company or corporation is, or has been, guilty of extortion, said commission shall make and fix a just and reasonable rate, toll, or compensation, which said railroad company or corporation may charge, collect, or receive for like services thereafter rendered. The rate, toll, or compensation so fixed by the commission shall be entered and be an order on the record book of their office and signed by the commission, and a copy thereof mailed to an officer, agent, or employe of the railroad company or corporation affected thereby, and shall be in full force and effect at the expiration of ten days thereafter, and may be revoked or modified by an order likewise entered of record. And should said railroad company or corporation or any officer, agent, or employe thereof, charge, collect, or receive a greater or higher rate, toll or compensation, for like services thereafter rendered than that made and fixed by said commission, as herein provided, said company or corporation, and said officer, agent, or employe shall each be deemed guilty of extortion, and upon conviction shall be fined for the first offense in any sum not less than five hundred dollars, nor more than one thousand dollars, and upon

a second conviction, in any sum not less than one thousand dollars nor more than two thousand dollars, and for a third and succeeding conviction, in any sum not less than two thousand dollars nor more than five thousand dollars.

§ 2. The circuit court of any county into or through which the line or lines of road carrying such passenger or freight, owned or operated by said railroad, and the Franklin circuit court shall have jurisdiction of the offense against the railroad company or corporation offending, and the circuit court of the county where such offense may be committed by said officer, agent, or employe shall have jurisdiction in all prosecutions against said officer, agent, or employe.

§ 3. Prosecutions under this act shall be by indictment.

§ 4. All prosecutions under this act shall be commenced within two years after the offense shall have been committed.

§ 5. In making said investigation, said commission may, when deemed necessary, take the depositions of witnesses before an examiner or notary public, whose fee shall be paid by the State, and upon the certificate of the chairman of the commission, approved by the Governor, the Auditor shall draw his warrant upon the Treasurer for its payment.

As soon as the appellants in the above-entitled causes, who constitute the Board of Railroad Commissioners of the State of Kentucky, gave notice to the appellees that they would fix a time and place to hear and determine whether the appellees were charging an extortionate and unreasonable rate in violation of the statute, suits were brought by the appellees in the United States Circuit Court, for the District of Kentucky, seeking an injunction preventing the Railroad Commissioners (appellants) from taking any steps whatever under the above statute. The Commissioners had not taken any step under the statute, save and except to serve notice upon the appellees that they would proceed to hear complaints and to fix a just and reasonable rate if extortionate rates were being charged. In this situation, and before any thing had been done by the Commissioners, the Circuit Court decided that the above statute is, in whole and in every part, a violation of the Fourteenth Amendment of the Constitution of the United States and, therefore, null and void, and

entered a judgment perpetually enjoining the Railroad Commissioners from taking any step whatever under the statute, and from proceeding to fix any rate whatever.

It results from this that the Board of Railroad Commissioners of the State will be prevented from exercising any of the important powers and functions attempted to be conferred by this statute until these appeals shall have been determined. The judgments appealed from were entered upon demurrers to the petitions, and only questions of law are involved. All of the cases present exactly the same issues, and the petitions are exactly the same, with the exception that, in addition to the issues presented by the other cases, the first case (that of McChord, &c., v. Louisville & Nashville Railroad Company) presents the additional issue of a contract right claimed by the railroad with the State of Kentucky in reference to the rates and tolls which it is privileged to charge.

It is exceedingly important, both to all of the railroads doing business in the State of Kentucky and to the people of that State, that the questions here involved be speedily determined. The various appellee railroads are represented by different counsel, and, owing to the importance of the questions, it is desired that the court may allow more than the regular time allotted to one case for the argument of these cases, if the court shall determine to advance and hear them together. Counsel therefore respectfully move the court as follows:

1. That the foregoing cases be advanced and set down for argument, heard together, and briefed by counsel accordingly.

2. That a just allowance of time be made in which counsel will be permitted to address the court upon the various issues.

ROBERT J. BRECKINRIDGE,
Attorney General of Kentucky.
LEWIS MCQUOWN,
KOHN, BAIRD & SPINDLE,
ZACK PHELPS,
For Appellants.

October 8, 1900.

No. 396.

Supreme Court of the United States.

OCTOBER TERM, 1900.

CHARLES C. MCCHORD, ETC., ... *Appellants*,

vs.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, . *Appellee.*

AND SUNDRY OTHER CASES.

SUGGESTIONS ON MOTION TO ADVANCE.

As counsel for the appellees in the five cases in which the appellants have submitted motion to advance, we respectfully suggest that the Court, if it shall determine to advance and try them together, shall allow in the five cases the time usually allowed to three cases.

The questions which are common to all of them are those relating to the constitutionality of the law printed in appellants' motion, and involve the consideration of many authorities. The proper solution of these questions is of great importance to the appellees, and it is difficult to see how they can be properly presented in less time than that ordinarily given to two cases.

There is a separate and distinct question in the Louisville & Nashville Railroad case. That company claims that it has the contract right to fix its own tolls within the limits

prescribed by an irrepealable charter. This question is one of supreme importance to the company, and one requiring a careful examination of the particular terms of the acts of the Legislature granting and amending the charter of the Louisville & Nashville Railroad Company, and at least the time ordinarily allotted to one case should be allowed for the discussion of this question.

Counsel for appellees believe it to be advisable to hear all these cases together, and respectfully request the Court to assign to counsel for the appellants a day and a half, and to counsel for appellees a day and a half—the time to be divided among the various counsel for the respective parties, and the order of argument to be as may be agreed upon by counsel on both sides; recognizing, of course, that the appellants are entitled to open and close.

Respectfully submitted,

J. P. HELM AND HELM BRUCE AND W. D. HINES,
For L. & N. and L., H. & St. L. R. R. Cos.

WARDWORTH & COCHRAN,
For C. & O.

EDWARD COLSTON AND C. B. SIMRALL,
For C., N. O. & T. P.

ALEX. P. HUMPHREY,
For S. R. Co. in Ky.

Oct. 3, 1900.

The appellees in the above-entitled cases are hereby notified that the appellants, at the October term, 1900, of the Supreme Court of the United States, on, to wit, October 8, 1900, at the meeting of said court, or as soon thereafter as a hearing can be had, will move the said court that the above-entitled cases be advanced and set down for argument, heard together, and briefed by counsel accordingly.

ROBERT J. BRECKINRIDGE,
Attorney General of Kentucky.
LEWIS MCQUOWN,
KOHN, BAIRD & SPINDLE,
ZACK PHELPS,
Attorneys for Appellants.

The appellees in the foregoing cases, by counsel, hereby accept notice of the above motion, and waive service of the same.

HELM, BRUCE & HELM,
WALKER D. HINES,
Solicitors for Appellee in No. 396.
HELM, BRUCE & HELM,
Solicitors for Appellee in No. 397.
WADSWORTH & COCHRAN,
Solicitors for Appellee in No. 398.
HUMPHREY, BURNETT & HUMPHREY,
Solicitors for Appellee in No. 399.
HARMEN, COLSTON, GOLDSMITH & HOADLEY,
C. B. SIMRALL,
Solicitors for Appellee in No. 400.